IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE	)	
	)	
v.	)	ID No. 0309014296
	)	
PAUL F. O'DONNELL,	)	
	)	
Defendant.	)	

Submitted: March 8, 2004
Decided: April 7, 2004

On Defendant's Motion to Dismiss. DENIED.

OPINION

R. David Favata, Deputy Attorney General, Wilmington, Delaware 19801. Attorney for the State of Delaware.

Bernard J. O'Donnell, Office of the Public Defender, Wilmington, Delaware 19801. Attorney for Paul F. O'Donnell.

JURDEN, J.

INTRODUCTION

The defendant has filed a Motion to Dismiss. The issue before the Court is whether collateral estoppel bars a criminal prosecution based on factual allegations decided adversely to the State in an earlier violation of probation hearing.

BACKGROUND

On September 19, 2003, the State arrested and charged the defendant with Escape After Conviction. The State alleged that the defendant violated his probation because of this new offense. On September 25, 2003, the Court held a violation of probation hearing. The probation officer who prepared the violation report did not attend the hearing. Another officer presented the violation. The basis for the violation was the defendant's unauthorized absence from his residence. The State called no witnesses at the hearing. The defendant called no witnesses either, but offered an explanation for his absence to the Court. After hearing the defendant's explanation, the Court dismissed the violation.

Following the violation of probation hearing, the State indicted the defendant for Escape After Conviction. The defendant filed the instant motion, arguing that collateral estoppel precludes the State from indicting him on the same charge that constituted the basis for violation of probation. The Court ordered briefing, and the matter is now ripe for consideration. For the reasons that follow, the defendant's Motion is DENIED.

DISCUSSION

In our criminal justice system, the fundamental role of the judge in a violation of probation hearing is to determine whether a violation has occurred and, if so, whether it would be appropriate to continue or revoke the defendant's probation. It is **not** to determine whether the defendant is guilty or not guilty of a crime.[1] The relaxed procedural rules and evidentiary burden applicable in revocation proceedings reflect their distinct purpose.[2] As several courts have noted, "[t]he exercise of . . . discretion in declining to revoke probation should not be viewed as, and is in no way an adjudication of, the allegations sufficient to constitute an acquittal in a criminal prosecution or any form of final judgment which would act as a bar to subsequent prosecution."[3] It appears that the majority of courts which have addressed this issue have concluded that "probation revocation hearings are so fundamentally different from criminal trials in their purpose and procedures that it would be unfair to apply collateral estoppel in these circumstances."[4] Because the purpose of a revocation

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[1] *See Lucido v. Superior Court of Mendicino County*, 795 P.2d 1223, 1230 (Cal. 1990); *see also*, *State v. Brunet*, 806 A.2d 1007, 1011 (Vt. 2002) ("The goal of a revocation hearing is not to decide guilt or innocence, but to determine whether the defendant remains a good risk for probation.").

[2] *Brunet*, 806 A.2d at 1011.

[3] *Teague v. State*, 312 S.E.2d 818, 820 (Ga. Ct. App. 1983), *aff'd,* 314 S.E.2d 910 (Ga. 1984).

[4] *Brunet*, 806 A.2d at 1010.

hearing is to determine whether the defendant is a good risk for continued probation, and not to punish him for a new offense, a revocation hearing is not essentially "criminal" in nature. Consequently, double jeopardy does not attach at a revocation hearing to bar a trial on a new charge.[5]

This Court holds violation of probation hearings every week. Consequently, the Court is able to hear the alleged violations within only a few days of their occurrence. Because of this, the State lacks preparation time that typically precedes a criminal trial. And, in fact, in some cases, the State may adduce additional evidence after the violation hearing. Violation of probation hearings are informal compared to trials and, unlike in trials, the rules of evidence do not apply. The Court further notes that, because the State need only prove a violation by a preponderance of the evidence, the State does not have the incentive to gather and present all potentially available evidence at the hearing.[6]

It is for these reasons that most courts have concluded that "it is neither fair nor wise to apply collateral estoppel to bar the relitigation of issues at a subsequent trial."[7] If the Court were to hold otherwise, the State would be forced to have Deputy

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[5] *Id.* at 1011.

[6] *Id.* at 1012.

[7] *Id.*; *see also Lucido*, 795 P.2d at 1230 ("Given these distinctions between the revocation hearing and a criminal trial, application of collateral estoppel would not serve the public interest

Attorneys General at all violation hearings to preserve the State's right to prosecute the defendants. This would undoubtedly "disturb the current criminal procedure in operation . . . and redirect valuable resources away from criminal prosecutions," and "force the revocation proceedings to become the main focus of the litigation turning revocation proceedings into mini-trials."[8]

In its Answering Brief, the State provides a very helpful analysis of case law from other jurisdictions.[9] In view of the abundance of case law from other jurisdictions, this Court is satisfied that application of collateral estoppel under these circumstances would be inappropriate and, therefore, the State is permitted to try the defendant on the same charge that formed the basis for the violation of probation. As a consequence of this holding, the defendant is not placed in "jeopardy" for the new

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in holding probationers accountable for *both* violation of the terms of their probation and commission of newly alleged crimes.") (emphasis in original); *State v. McDowell*, 699 A.2d 987, 990 (Conn. 1997) ("We follow the better reasoning of other courts that have addressed this issue and have concluded that collateral estoppel does not apply to issues raised at a revocation hearing and later forming the basis of a criminal trial.") (citations omitted).

[8] *State v. Terry*, 620 N.W.2d 217, 222 (Wis. Ct. App. 2000); *see also Krochta v. Commonwealth*, 711 N.E.2d 142, 148 (Mass. 1999) ("If collateral estoppel bars a criminal prosecution as a result of a probation revocation proceeding, a conflict between the separate goals of the probation department and the district attorney may result, frustrating the ability of both to accomplish the ends assigned them by the Legislature. The probation department, whose duty it is to enforce probationary sentences, has an incentive to seek probation surrender expeditiously following the filing of an indictment against a probationer.").

[9] *See* State's Answer Brief (Docket No. 14) at 6-16.

criminal charge.[10]

Defendant strenuously argues that because all the elements of collateral estoppel have been met, the Court must apply that doctrine and preclude the State from prosecuting the defendant on the Escape After Conviction charge. [11] This is not correct. The analysis does not end here. Assuming *arguendo*, the elements of collateral estoppel have been met, the Court must go on to consider "the public policies underlying the doctrine before concluding that collateral estoppel should be applied" under the particular circumstances.[12] As discussed above, public policy considerations warrant relitigation under these circumstances.

Accordingly, the defendant's Motion to Dismiss is DENIED.

IT IS SO ORDERED.

Judge Jan R. Jurden

[10] See *Lucido*, 795 P.2d at 1227 (". . . jeopardy does not attach in probation revocation hearings, which do not constitute 'trial' on a new criminal charge, result in 'conviction,' or integrally relate to 'enforcement' of the criminal laws.").

[11] *See* Def.'s Opening Brief on Mot. to Dismiss (Docket No. 13) at 7-13; Def.'s Reply Brief on Mot. to Dismiss (Docket No. 16) at 2-5.

[12] *Lucido*, 795 P.2d at 1226; *see also Terry*, 620 N.W. 2d at 220, 222.